THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION NO.12684 OF 2003

DATE: 18th November 2006

Between:
K.Venkata Krishna Reddy,
S/o Sundara Rami Reddy,
Aged 62 years, Occ: Agriculture,
R/o Annavaram village,
Jaladanki Mandal, Nellore District.

…Petitioner

And

1. A.P. Cooperative Tribunal, Vijayawada,
   represented by its Chairman
   and 2 others.

…Respondents.

* * *

ORDER:

This writ petition is filed seeking a writ of Certiorari calling for records in O.A.No.13 of 2002 dated 14.12.2001 on the file of the A.P. Cooperative Tribunal, Vijayawada, wherein the orders passed by the surcharge authority (The Deputy Registrar of Cooperative Societies, Kavali) under Section 60 of the A.P. Cooperative Societies Act, 1964 (for short 'the Act') in R.C.No.1466/95-C, dated 14.12.2001 were confirmed.

2. It appears that the petitioner was president of the Annavaram Primary Agricultural Cooperative Credit Society, Annavaram, during the period from 1981-1987. His term of office

expired on 01.7.1985 and thereafter an official person-in-charge was appointed. In addition to their business, the society was also selling fertilizers to its members. During petitioner's tenure, as president, Rs.20,00,000/- worth fertilizers was sold to the members and during the term of the official person-in-charge Rs.45,00,000/- worth fertilizers was sold. It seems, thereafter, in view of an enquiry under Section 51 of the Act, the enquiry officer submitted a report holding that the petitioner is responsible for causing loss to the assets of the society to the tune of Rs.64,000/-. Thereafter, the Divisional Cooperative Officer, probed into the report submitted by the enquiry officer and asked the enquiry officer to submit the record to show that the petitioner caused deficiency/loss to the assets of the society to the tune of Rs.64,000/-. But absolutely there was no response from him in spite of there being more than three letters. While that being so, a second enquiry officer was appointed under Section 51 of the Act to conduct an enquiry into the affairs of the society. When the second enquiry officer asked for the record for conducting enquiry, the Divisional Cooperative Officer, simply stated that the record was not available with him and the record is available with the officer who conducted enquiry earlier under Section 51 of the Act and submitted a report. If records are not available, he may take the earlier report submitted by the enquiry officer into consideration and submit a report. It seems without verifying the records, the second enquiry officer submitted the report under Section 51 of the Act based on the report submitted by the previous officer holding that the petitioner is liable for payment of

Rs.64,000/-. Further, the matter was referred to the surcharge authority under Section 60 of the Act. Even before the surcharge authority, the petitioner had asked for the documents on the basis of which the enquiry officer came to the conclusion that the petitioner is liable for an amount of Rs.64,000/-. In spite of repeated requests, material papers were not furnished and ultimately the surcharge authority passed orders *ex parte* holding thus.

> " in spite of several opportunities given to him, he has neither submitted his representation or objections if any for the proposed action nor appeared for personal hearing before the Deputy Registrar, Cooperative Societies, Kavali. Therefore, it is presumed that he has no explanation or objections to offer on the notices issued to him. Therefore, the following order is made for recovery of the amount from him."

3. Aggrieved by the same, the petitioner carried the matter in appeal before the A.P. Cooperative Tribunal at Vijayawada in O.A.No.13 of 2002. Even before the appellate authority, the petitioner categorically stated that the enquiry report submitted by the first officer under Section 51 of the Act is not based on any documentary evidence. Further, the second enquiry officer was appointed, but he did not do anything much, except relying on the report submitted by the earlier enquiry officer which cannot be relied upon for the purpose of Section 60 of the Act. Further, learned counsel for the petitioner stated that the petitioner was not president of the said society from 06.9.1985 to 12.1.1986.

4. In the whole of the 51 enquiry reports submitted by the first

officer or second officer the period during which these irregularities had taken place for which the petitioner was made responsible, are not available. The appellate authority, except saying that all the material papers as required were supplied to the appellant, nothing has been stated specifically with regard to supply of documents and the date and number of documents etc., In the surcharge proceedings under Section 60 of the Act or by the appellate authority in O.A.No.13 of 2002 except saying that protracted correspondence made between the appellant and the first respondent clearly shows that ample opportunity was given at every stage to the appellant duly following principles of natural justice. Except this, nothing is indicated to show that the report of the first enquiry officer or the second enquiry officer under Section 51 of the Act was based on specific documentary evidence and it was not discussed either by the surcharge authority or by the appellate authority. I am of the opinion, that conducting successive enquiries under Section 51 of the Act itself is not desirable.

5. Further, in this case, admittedly, the second enquiry officer has not done anything much, except adopting the report of the first enquiry officer, since no records were available with the second enquiry officer. When no records are available with the second enquiry officer, the findings recorded are not tenable, since they are not based on record placed before him. Therefore, the subsequent proceedings under Section 60 and further proceedings under Section 76 in O.A.No.13 of 2002 are all in gross violation of principles of natural justice; therefore, they are all liable to be set

aside and accordingly set aside. The matter is remitted to the primary authority i.e., surcharge authority under Section 60 of the Cooperative Societies Act for re-consideration of the entire issue.

6. The writ petition is allowed to the extent indicated above. No costs.

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C.V.RAMULU, J.

Date: 18th November 2006

Note:
Issue CC by one week.

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